IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R. RAMACHANDRAN NAIR

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 15755 of 2007(S)

AGAINST ORDER IN I.A. 334/2007 IN OP.219/2006
of FAMILY COURT, KANNUR
.....

PETITIONER/ RESPONDENT/RESPONDENT

A.P. BALAKRISHNAN, S/O T. KUNHIRAMAN,
AGED 57 YEARS, MOTTAKKE VALAPPIL, KOTTAYAD PO,
KANDAKAI (VIA) MAYYIL, KANNUR.

BY ADV. SRI. K.C. SANTHOSHKUMAR
SMT. K.K. CHANDRALEKHA
SRI. SUDHEESH THAROL

RESPONDENT/ PETITIONER/PETITIONER

NALINI K.V., D/O LATE KUNHIRAMAN,
SNEHATHEERAM, 8TH MILE, P.O. MAYYIL, KANNUR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & T.R. RAMACHANDRAN NAIR, JJ.

W.P. (C) NO. 15755 OF 2007

Dated this the 25th day of May, 2007.

J U D G M E N T

Kurian Joseph, J.

The petitioner is aggrieved by the order dated 21.04.2007 in I.A. No.334/2007 in O.P. No. 219/2006 on the file of Family Court, Kannur. O.P. No. 219/2006 was once dismissed for default. It is not in dispute that there was an attachment before judgment. It is submitted that once the suit is dismissed for default, on the restoration of the suit the attachment does not get automatically revived. We have no quarrel with the proposition, since the statutory provision under Rule 11A (2) of Order XXXVIII of Code of Civil Procedure is clear and unambiguous. But, that does not mean that the attachment cannot be revived at all. Indisputably, on restoration of the suit once dismissed for default, the attachment originally granted can be revived on a motion under Rule 11A (2) of Order XXXVIII of CPC.

2. It is the contention of the petitioner that instead of such a step for revival what is prayed in I.A. No. 334/2007 is fresh attachment. May be the respondent quoted a wrong provision. But, the court below has understood the provisions correctly and has held

that an application under Section 151 CPC for the revival of the earlier order of attachment is maintainable and hence the petition filed by the respondent has been treated as one filed under Section 151 CPC and allowed the same by restoring the order in I.A. No. 257/2006, which was dismissed along with the dismissal of the suit for default.

It is settled law that even if a wrong provision has been quoted, the court is competent to invoke the powers vested in it and deal with the matter appropriately. Hence, there is no merit in this writ petition and it is accordingly dismissed.

This writ petition is dismissed.

KURIAN JOSEPH
JUDGE

T.R. RAMACHANDRAN NAIR
JUDGE

smp